



Roll Call Reporter

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LEGAL UPDATE FOR MARYLAND LAW ENFORCEMENT OFFICERS

K-9 Behavior and Probable Cause to Search a Vehicle

Question: Can probable cause to conduct a warrantless vehicle search exist even if a drug detection K-9 fails to provide its trained, final alert?

Answer: Yes. Probable cause exists if a drug detection K-9 fails to provide its trained, final alert, but, nonetheless exhibits behavior consistent with positive drug detection.

**Case: *Ryan Lawrence Steck v. State of Maryland*
Court of Special Appeals of Maryland
Decided November 28, 2018**

The Traffic Violation, the Traffic Stop, and the Request for the K-9

In the early morning of August 7, 2016, while working bicycle patrol in Ocean City, Officer Dan McBride of the Ocean City Police Department ("OCPD"), observed a 2008 black Chevy Impala stop at a stop sign and then make a left-hand turn, crossing over one lane of roadway. When the Impala made its left-hand turn, it pulled in front of another vehicle, which caused the driver of the other vehicle to slam on his brakes to avoid a collision. Believing that the driver had committed an unsafe lane change, Officer McBride broadcast a

description of the Impala and its occupants over his police radio. The vehicle was subsequently stopped by Officer Neshawn Jubilee of the OCPD at 12:24 a.m. Officer McBride arrived at the scene of the stop three to four minutes later.

The driver of the Impala was identified as Etoyi Roach and the passenger in the back seat was identified as Ryan Lawrence Steck. After briefly speaking with the occupants, Officer McBride began issuing a written warning to Roach. He also requested that a K-9 unit respond to the scene. He made the request because the vehicle coasted to a stop instead of immediately pulling over, and the occupants made furtive movements as the vehicle came to a stop. Officer McBride was still writing the warning when the K-9 unit arrived approximately two minutes after it was called to the scene. The K-9 unit arrived at 12:32 a.m., eight minutes after the stop was initiated.

The K-9 Scan, the Seizure of Marijuana, and the Vehicle Search

The K-9 officer was Deputy Christopher Larmore of the Worcester County Sheriff's Office. Upon his arrival, Deputy Larmore requested that Officer McBride and the other officers remove the occupants from the vehicle for safety reasons. The occupants exited the vehicle and sat on the curb. Deputy Larmore then gave his K-9 his command to

scan the vehicle. Almost immediately, Deputy Larmore noticed a change in the K-9's breathing and posture, consistent with the detection of the odor of narcotics. When the K-9 reached the rear passenger door, he began to move back and forth, first towards the occupants and then back towards the vehicle. As the K-9 moved back and forth, he was sniffing the air, which was another behavior consistent with the detection of the odor of narcotics. Because the K-9 was detecting odors from two different directions, he would not go into his final alert or sitting position.

When Officer McBride asked if the K-9 had alerted, Deputy Larmore said that he believed that the odor was mostly coming from the occupants and that's why the K-9 kept trying to pull towards them. He also said that the K-9's behavior was consistent with the odor of narcotics coming from the vehicle as well as from the occupants sitting on the curb. In other words, the K-9 had detected two sources of the odor.

Once the scan was complete, another officer from the OCPD asked Steck if he had any drugs or weapons on his person. Steck replied that he had a "blunt" inside of his pocket. The officer asked him to remove it and Steck retrieved a clear plastic bag containing marijuana and handed it to the officer. After the seizure of the marijuana, officers searched the Impala and discovered one thousand bags of heroin.

The Charges, the Motion to Suppress, and the Conviction

Steck was arrested and charged with multiple drug offenses, including possession with intent to distribute heroin and possession of heroin. He moved to suppress the evidence against him on multiple grounds. Steck's motion to suppress was denied and he was convicted by a jury in the Circuit Court for Worcester County. He was sentenced to fourteen years. Steck appealed.

The Outcome on Appeal

On appeal, Steck contended that his motion to suppress was improperly denied. He challenged the evidence against him on grounds that: (1) the initial traffic stop was unlawful because there had been no traffic violation; (2) the traffic stop was unlawfully prolonged in order to allow the K-9 scan; and (3) there was no probable cause to search the vehicle because the K-9 failed to provide a trained, final alert.

The Court of Special Appeals upheld the denial of the motion to suppress and affirmed Steck's conviction. As to the traffic stop, the court agreed with the circuit court that what had been observed by Officer McBride was grounds for a traffic offense, specifically a violation of TR §21-403(b) (Stopping at entrance to through highway) or (c) (Stopping in obedience to stop signs). As to allegedly prolonging the traffic stop, the court found that the eight minutes that lapsed from the stop to the arrival of the K-9 unit was not indicative of any undue delay. Officer McBride testified that he had arrived three or four minutes after the stop and was still writing the warning when the K-9 unit arrived. Finally, as to the alleged absence of probable cause to search the Impala, the court found the K-9 officer's testimony to be determinative. Deputy Larmore testified that, even in the absence of a final, trained alert, the K-9's behavior indicated the presence of drugs in the vehicle. For these reasons, Steck's conviction was upheld.

Note: In determining whether a dog's conduct provides probable cause for a warrantless vehicle search, the court will evaluate the credibility of the dog's handler and other witnesses on the scene. The testimony of the handler is key. The handler's testimony must not be too subjective; the handler must describe the objectively observable behavior of the dog indicating the presence of drugs. If "cueing" is raised by the defendant, the handler's testimony must negate it.



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